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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/484,928 06/07/95 MICHELSON

G P-12509

QM22/0510

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CHANTILLY VA 20151-1101

EXAMINER

BROWN, M

ART UNIT

PAPER NUMBER

3764

30

DATE MAILED:

05/10/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/484,928

Applicant(s)

Gary Michelson

Examiner

Michael Brown

Group Art Unit

3764

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 2/14/2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-26, 28-51, 53-75, 77-82, 84-86, 98, 101-132 and 135-167 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-26, 28-51, 53-75, 77-82, 84-86, 98, 101-132 and 135-167 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 5-7, 9-10, 17-22, 26-32, 34-35, 42-48, 53-57, 59-60, 67-72, 77-82, 89-94, 98-105, 107-108, 115-120, 124-126 and 131-132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich '638 in view of Kuslich '638, as set forth in the previous office action, Paper No.19, along with Bagby.

Bagby teaches in figures 1-2 a spinal implant that is non-threaded. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the spinal implant as disclosed by Kuslich and taught by Kuslich could be constructed as a non-threaded implant as taught by Bagby. The non-threaded implant would not remove additional bone from the opening made in the vertebrae.

3. Claims 8, 13, 33, 38, 58, 63, 80, 85, 106, 111, 128 and 134 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich '638 in view of Kuslich '638, along with Ray, as set forth the previous office action, Paper No. 19, along with Bagby.

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Bagby teaches in figures 1-2 a non-threaded implant, as set forth immediately above. It would have been obvious to one having ordinary skill in the art to incorporate the non-threaded implant as taught by Bagby into the spinal implant as disclosed by Kuslich and taught by Kuslich and Ray for the reason set forth above.

4. Claims 11, 14-16, 23-24, 36, 39-41, 49-50, 61, 64-66, 73-74, 83-84, 86-88, 95-96, 109, 112-114, 121-122, 127, 129, 133 and 135 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich '638 in view of Kuslich '638, along with Brantigan, as set forth in the previous office action, Paper No. 19, along with Bagby..

Bagby teaches in figures 1-2 a non-threaded implant as set forth above. It would have been obvious to one having ordinary skill in the art to incorporate the non-threaded implant as taught by Bagby into the spinal implant as disclosed by Kuslich and taught by Kuslich and Brantigan for the reason set forth above.

Response to Arguments

5. Applicant's arguments with respect to claims 1-26, 28-51, 53-75, 77-82, 84-96, 101-132 and 135-167 have been considered but are moot in view of the new ground(s) of rejection.

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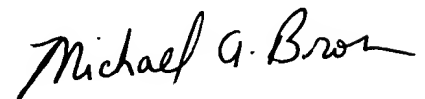
Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown
May 7, 2001



Michael A. Brown
Primary Examiner